3767.

SUPREME COURT OF THE UNITED STATES.

No. 190.

THE UNITED STATES, APPELLANTS,

vs.

ANTONIO MARIA PICO AND HENRY M. NAGLEE.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Petition	3	2
Deposition of S. Arguello	5	2
Deposition of Antonio Sunol	6	3
"A"—Espediente	7	4
Map	12	7
"B"—Translation of espediente	13	7
Original grant marked "Doc. J. W. No. 1" annexed to deposition of S. Arguello	18	11
"D"—Translation of Doc. J. W. No. 1, annexed to deposition of S. Arguello	20	12
"E"	22	13
Original deed from Pico and wife to Naglee	24	15
Opinion	26	16
Decree	27	17
Order	27	17
Secretary's certificate	28	17
Notice of intention to prosecute appeal	29	18
Petition for review, &c	29	18
Answer	31	20
Deposition of Wm. B. Fleming	32	20
Deposition of A. P. Crittenden	34	21
Deposition of H. Ehrenberg	35	21
Deposition of H. P. Andrews	36	22
Opinion delivered by his honor Judge Ogden Hoffman	37	22
Decree	42	26
Order granting appeal	44	26
Order granting appeal	45	27
Citation	46	27
Clerk's certificate	48	28

GIBSON, Print.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this tenth day of June, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Antonio Maria Pico et al., for the place named "El Pescadero," was presented, and ordered to be filed and docketed with No. 267, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *October 8th*, 1852.

In case No. 267, Antonio Maria Pico et al., for the place named "El Pescadero," the deposition of Santiago Arguello, a witness in behalf of the claimants, taken before Commissioner James Wilson, with document marked J. W. No. 1, annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *January 15th*, 1853.

In the same case the deposition of Antonio Suñol, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *September 13th*, 1853.

Case No. 267 called. On motion of the counsel for the claimants, ordered to the foot of the docket.

SAN FRANCISCO, *June 20th*, 1854.

Case No. 267, on motion of the counsel for the claimants, was ordered to be placed at the foot of the calendar of the 1st class cases on the trial docket.

SAN FRANCISCO, *August 17th*, 1854.

Case No. 267 was submitted without argument.

SAN FRANCISCO, *September 19th*, 1854.

In the same case Commissioner S. B. Farwell delivered the opinion of the board rejecting the claim.

(Vide page 25 of this Transcript.)

And the following order was made, to wit:

(Vide page 26 of this Transcript.)

Petition,

To the honorable Commissioners to settle private land claims in California.

The petitioners, Antonio Maria Pico and Henry M. Naglee, respectfully show, that on the 28th of November, A. D. 1843, Manuel Micheltorena, governor of California, by virtue of authority in him vested, granted to one of the petitioners, Antonio Maria Pico, the tract of land called "El Pescadero," situated in the present county of San Joaquin, and containing eight square leagues of land, more or less, with the boundaries set forth in the title and respective map, all of which is shown in the espediente, a *certify* copy of which is submitted herewith, marked "A," with a translation marked "B;" the petitioners also submit herewith a copy of the title issued to the said Pico, marked "C," with a translation marked "D."

And the petitioners further show, that on the 25th day of April, A. D. 1849, the said Antonio Maria Pico and wife sold and conveyed to the said Henry M. Naglee one undivided half of the said tract of land, a copy of which conveyance is submitted herewith, marked "E."

And the petitioners further show, that the said tract of land has not been surveyed by the surveyor general of the United States, but that its boundaries are fully described in the grant and map, and are well known. That the said Pico has been for some ten years, and the petitioners now are, in the possession and occupation of the said tract of land. That they know of no conflicting claim. That they rely for confirmation of title upon the original documents, copies of which are submitted herewith, upon the records and minutes in the archives now under the charge of the surveyor general, and upon such other and further proofs as they may be advised are necessary. Wherefore they pray the commissioners to confirm to them the aforesaid tract of land.

Filed in office June 10th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in record of Petitions, vol 1, page 135.

GEO. FISHER, *Sec'y.*

Deposition of S. Arguello.

No. 267. OFFICE OF THE UNITED STATES LAND COMMISSION,
Los Angeles, October 8th, 1852.

On this day, before James Wilson, one of the commissioners for ascertaining and settling private land claims in California, came S. Arguello, a witness produced in behalf of the claimants, An-

tonio Maria Pico and Henry M. Naglee, whose petition is No. 267 on the docket of the board, and was duly sworn. His evidence being given in Spanish, was interpreted by the secretary.

The law agent of the United States was present, by R. Greenhow, esq., and did not object.

Question 1st. What is your name, age, and place of residence?

Answer. I reside near the port of San Diego, and have lived in California all my life.

Question 2d. Examine the document before you, marked J. W. No. 1, and say whether you are acquainted with the signatures, and whether the document is genuine.

Answer. I have examined the document marked J. W. No. 1, and am acquainted with the signatures of Manuel Micheltorena and Manuel Jimeno; their signatures to this document are genuine, and the document itself, to the best of my knowledge and belief, is also genuine.

Oct. 8th, 1852.

S. ARGUELLO.

Subscribed and sworn to before me.

JAMES WILSON,
Commissioner.

Filed in office October 8th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 2, p. 64.

GEO. FISHER, *Sec'y.*

Deposition of Antonio Sunol.

SAN FRANCISCO, *January 15th*, 1852.

On this day, before H. J. Thornton, commissioner, came Antonio Suñol, a witness in behalf of the claimants, Antonio Maria Pico and Henry M. Naglee, petition No. 267, and was duly sworn, his evidence being interpreted by the secretary.

(The United States law agent present.)

My name is Antonio Suñol, my age 55 years; I reside in San José, and have lived in California for 35 years. I know the rancho called "El Pescadero," which was granted to Antonio Maria Pico in 1843. It is situated on the San Joaquin river. Soon after Pico received this grant he prepared to remove his cattle on this rancho, but the Indians became hostile about this time and murdered Gulnac's mayordomo on the other side of the river, and prevented Pico from settling on his land. From this time until 1848 and 1849, the Indians continued hostile, and robbed the ranchos even down to the valley of San José. In 1847, troops were sent out against them, but they continued their depredations until after the discovery of gold in 1848.

ANTONIO SUÑOL.

I have no questions to ask on the preceding.

R. GREENHOW,
Asst. Law Agent U. S.

Sworn to and subscribed before me this January 15th, 1853.

HARRY J. THORNTON,
Commissioner.

Recorded in Ev. B., vol. 2, p. 437.

GEO. FISHER, *Sec'y.*

"A."

1844.

Espediente.

Promovido por el ciudadano Antonio Maria Pico en solicitud del parage nombrado el Paso del Pescadero.

370.

Sello Cuarto—Dos Reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterrey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES.

MICHELTORENA.

[SEAL.] Señor Prefecto del 1er Distrito:

Antonio Ma. Pico, natural de este departamento ante V. S. respetuosamente digo que en la solicitud que acompaño marcada con nel me mervano sente por una equivocacion que el terreno que en ella pretendo nombrado el Pescadero es colindante con el perteneciente á Dn. Juan Sutter, y en concequencia V. S. decrete informar este s'or, y siendo que el mismo terreno que pido esta inmediato al pueblo de San José diriji al s'or subprefecto de aquella cabecera la instancia que tambien adjunto y aparesiendo en ella sin informe verdadero favorable á mi pretencion he de mereser de V. S. que sirviendose rebocar su espresado decreto se digne igualmente manifestar al superior gobierno del departamento el pareser destilo para que se me conceda en propiedad segun las letras el terreno referido del que afecto en cullo el diseño correspondiente. Y por tanto, A. V. S. suplico aceda á mi presente de lo cual recibire gracia y justicia jurando lo necesario S.

Monterrey, Nov're 20, de 1843.

ANTONIO MA. PICO.

S'or S'rio del Despacho:

Dn. Antonio Maria Pico, Mexicano por nacimiento pretende en este espediente el terreno nombrado el Pescadero en estencion de ocho sitios de ganado mayor inmediato mas que á otro pueblo al de San José esta prefectura habia dispuesto que Dn. Juan A. Sut-

ter informase a cerca de dicho terreno en virtud de considerarlo colindante á el mas resultando que el S'or Pico se equivoco en sentarlo asi en la instancia ue V. S. me paso y consta en este espediente, y que presenta lo que hizo al s'r subprefecto del espresado pueblo quien informa hallarse baldio el mismo terreno y no pertenecer a corporacion ni particular alguno no encuentra embarazo esta prefectura en que se le conceda al interesado los referidos sitios que solicita si el sup'r gob'o del departamento lo creyere de justicia.

Monterrey, Nov'bre 21, de 1843.

JOSÉ R. ESTRADA.

Ex'mo S'or Gobernador:

Por los informes que aparecen en este espediente resulta que el terreno pretendido esta valdio y no pertenece á mision, pueblo ni particular alguno, y aunque hay otra solicitud, habiendo la misma pretencion y esta careciendo sus tramites, pero esta tiene la antiguidad: mas V. E. dara la determinacion que crea conveniente.

Monterrey, 21 de No'bre, de 1843.

MANUEL JIMENO.

MONTERREY, *Nov're* 21, *de* 1843.

La s'ria concluidos que sean los tramites del otro espediente relativo presentara los dos para resolver.

MICHELTORENA.

Sello Cuarto—Dos Reales.

Habilitado provicionalmente por la aduana maritima del puerto del Monterey en el departamento de las Californias para el año de mil ochocientos cuarenta y tres.

MICHELTORENA. MANUEL CASTANARES.

[SEAL.] Exmo. Señor Gobernador:

{ Gobierno politico de Californias. } Antonio Ma. Pico, Mexicano por nacimiento y residente en el pueblo de San José de Guadalupe ante V. E. como mas haya lugar en derecho comparesco y digo: que teniendo un numero bastante considerable de ganado mayor y caballada y deseando fomentarlo, solicito el que V. E. tenga á bien amplearme el derecho del parage nombrado el Pescadero, que se halla en la inmediacion del rio de San Joaquin colindante con los S. S. Dn. Juan Shutero, Dn. Guillermo Gulnac, Dn. Juan *Juan* Mashe, y Dn. José Noriega; dicho parage se conoce valdio y sin pretendiente alguno, y se compone de ocho sitios de ganado mayor segun desmostrara el diseño que para mi seguridad debere formar si se me concede el parage pago mencion en este. Por tanto A. V. E. rendidamente suplico se digne acceder a favor del interesado, gracia que imploro jurando no ser de malicia y lo necesario.

Pueblo de San José, Octubre 4, de 1843.

ANTONIO MA. PICO.

MONTEREY, *Oct're 7, de* 1843.

Ynf'l el S. s'rio del despacho tomando ante los que necesite.

MICHELTORENA.

Como dispone el E. S. gobernador para la antecedente instancia al s'r prefecto del primer distrito para que se sirva informar sobre el contenido de ella, y despues dirijirla al encargada de justicia del distrito del Sacramento y concluir lo que sea todo, buelva á esta s'ria para cumplir con lo prevenido en el superior decreto dicha f'ha de hoy.

Monterrey, Oc'bre 7, de 1843.

MANUEL JIMEÑO.

Ynforme. El s'or encargado de justicia del establecimiento de Nueva Helvetia Don Juan A. Sutter, si el terreno que se presente se halla baldio con las demas esplicaciones de estilo. Pref'a del primer distrito.

Monterrey, O'bre 13, de 1843. ESTRADO.

MONTERREY, *Febrero* 19, *de* 1844.

Citense a los ciudadanos Pico que esta aqui y á Valentin Higuera y Rafael Setia para ver ese una conferencia antes el gobierno si para el bien comun de ellos si convienen en qe se les conceda el Pescadero en compañia, ó partiendolo al empres con la condicion que espresa el M. R. P. en el informe que dio al memorial de Higuera y Felis. Adjunto en este espediente. MICHELTORENA.

Sello Quinto—Medio Real.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES.

MICHELTORENA.

S'or Sub-Prefecto:

{Aduana Ma. de Monterrey.} El ciudadano Antonio Maria Pico vecino del pueblo de San José ante V. como mas haya lugar se presenta y dice: que en virtud del decreto que el s'r géfe superior se ha servido espedir en la solicitud qne tenga hecho del parage nombrado el Pescadero afin de que pase, hasta con el Capitan Sutter, a peder informe del espresado terreno y como considero inutil esta deligencia por estar muy distante de aquel establecimiento y en tal caso adonde corresponde informar esa esta jurisdiccion del pueblo de San José y no aquella como dejo dicho por lo que suplico V. se serva, efectuarlo asi pa. precaber todo trastorno ó atraso que pueda suseder. Por tanto, A. V. suplico se digne tener en consideracion lo que dejo espuesto y dar su dispocicion segun jusque conbeniente.

S. Teresa, 8 de Nov're, de 1843.

ANTONIO MA. PICO.

#301

PUEBLO DE SAN JOSÉ, *Oc'bre, de* 1843.

En cuanto a el ynforme que pido la parte debo decir que el terreno que solicita se halla distante del cotablecimiento del Sacramento como veinte y cinco leguas colinda con Dn. Juan Murs, con el rio de S. Joaquin con Dn. José Noriega y vista de la mision de San José como doce leguas; por lo que se resolve reconocio valdio y no haber ningun impedimento para podersele concedir. Y a peticion del interesado le di el presente en d'ho pueblo f'ha ut supra.

SUÑOL.

[*For map see original, page* 12.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and, as such, now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, do hereby certify that the twelve preceding and hereunto annexed pages of tracing paper, numbered from one to twelve inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name, officially, and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., this 20th day of March, 1852.

SAMUEL D. KING,
Sur'yor G'l Cal'a.

Filed in office June 10th, 1852.

GEO. FISHER, *Sec'y.*

"B."—*Translation of Espediente.*

Stamp Fourth—Two Reales.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-three.

(Signed) MANUEL CASTAÑARES.
(Signed) MICHELTORENA.

{Seal of Mont'y Custom-house.}
{Seal of Civ. Gov't of A. Cal.}

To his Excellency the Governor:

I, Antonio Maria Pico, a Mexican by birth and resident in the pueblo of San José de Guadalupe, before your excellency as I best may in law, appear and say, that owning a sufficiently large num-

ber of cattle and horses, and desiring to increase them, I pray your excellency to have the goodness to extend to me the right to the place named "El Pescadero," situated in the neighborhood of the river San Joaquin, adjoining those of Don Juan Sutter, Don Guillermo Gulnac, Don Juan Mashe and Don José Noriega. Said place is known to be vacant and without any claimant, and contains eight square leagues, as will be shown by the map, which for my security I will form, if the place I have mentioned is granted to me.

Wherefore I earnestly request your excellency to have the goodness to accede this favor to the person interested; a gift which I implore, swearing that I do not act with evil intent, and whatever else may be necessary.

Pueblo of San José, Oct. 4, 1843.

(Signed) ANTONIO MA. PICO.

MONTEREY, *Oct.* 7, 1843.

Let the secretary of state report, calling for such information as he may need.

(Signed) MICHELTORENA.

As directed by his excellency the governor, let the foregoing petition be referred to his honor the prefect of the first district, that he may be pleased to report upon its contents, and afterwards transmit it to the person charged with the administration of justice in the district of Sacramento; and all this being finished, let it be returned to this secretary's office, for the purpose of complying with the requirements of the superior decree of this date.

Monterey, October 7th, 1843.

(Signed) MANUEL JIMENO.

Let the person charged with the administration of justice of the establishment of New Helvetia, Don Juan A. Sutter, whether the land petitioned for is vacant, with the other explanations in the usual form.

Prefecture of the first district, Monterey, October 12th, 1843.

(Signed) ESTRADA.

MONTEREY, *February* 13, 1844.

Let citizens Pico, who is here, and Valentin Higuera and Rafael Feliz, be summoned to a conference before the governor, to see if for the common good they can agree in having (the land) of "El Pescadero" granted to them in partnership, or dividing it, but always with the condition specified by the M. K. P., in the report made by him on the memorial of Higuera and Feliz, annexed to this espediente.

(Signed) MICHELTORENA.

Stamp Fifth—Half a Real.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year eighteen hundred and forty-three.

(Signed) MANUEL CASTAÑARES.
(Signed) MICHELTORENA.

To the Sub-Prefect:

{ Monterey Custom H. }

Citizen Antonio Maria Pico, resident of the pueblo of San José, before you in the manner most favorable present myself and say, that in virtue of the decree which his excellency the governor has been pleased to issue in the petition which I have, for the place named El Pescadero, that it should be referred even to Captain Sutter, to request information as to the aforesaid land; and as I consider this trouble unnecessary, as it is far distant from that place, and in this case it belongs to the jurisdiction of the pueblo to report, and not to that as I have before said; for which reason I pray you to have the goodness to do so, in order to avoid any confusion or delay which might happen.

Wherefore I pray you to have the goodness to take into consideration that which I have stated, and make such disposition as you may think proper.

Santa Teresa, November 8th, 1843.

(Signed) ANTONIO MA. PICO.

Pueblo of San José, *November 10th*, 1843.

In reference to the report which the party (petitioning) requests, I have to say, that the land petitioned for is situated about thirty-five leagues from the establishment of Sacramento, and is bounded by Don Juan Marsh, by the river San Joaquin, by Don José Noriega, and is distant about twelve leagues from the mission of San José. For which reasons it is known to be vacant, and that there is no objection to its being granted, and, at the request of the person interested, I gave him this in the said pueblo, date as above.

(Signed) SUÑOL.

Stamp Fourth—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year eighteen hundred and forty-three.

(Signed) MANUEL CASTAÑARES.
(Signed) MICHELTORENA.

{ Monterey Custom H. }

To his Honor the Prefect of the 1st District:

I, Antonio Maria Pico, native of this department, before your

honor respectfully say, that in the petition which I transmit I said, by mistake, that the land which in it I asked for, named "El Pescadero," is bounded by that pertaining to Don Juan Sutter, and in consequence your honor ordered that gentleman to report; and being that the same land which I request is near to the pueblo of San José, I transmitted the petition, which I also annex, to the sub-prefect of that "Cabecero;" and as there appears in it a true report favorable to my request, I have to that your honor will revoke the aforesaid order, and also have the goodness to make known to the superior government of the department your opinion in the customary form, in order that the place referred to may be granted to me in fee according to law, for which purpose I enclose the corresponding map of it.

And therefore I pray your honor accede to my present (request), by which I will receive favor and justice, swearing whatever may be necessary.

Monterey, November 20, 1843.

(Signed) ANTONIO MA. PICO.

To the Secretary of State:

Don Antonio Maria Pico, a Mexican by birth, petitions in this espediente for the land named "El Pescadero," in extent eight square leagues, nearer to San José than to any other town. This prefecture had ordered that Don Juan A. Sutter should report relative to said land, as he was considered as a "colindante;" but as it turns out that Señor Pico was mistaken in so stating in the petition which you referred to me, and which appears in this espediente, and he presents that (report) which was made by the sub-prefect of the aforesaid pueblo, who states that the land referred to is vacant, and does not belong to any corporation or individual, and this prefecture finds no objection to there being granted to the person interested the number of leagues he petitions for, if the supreme departmental government should think it just.

Monterey, November 21st, 1843.

(Signed) JOSÉ R. ESTRADA.

To his Excellency the Governor:

It appears by the reports which are seen in this espediente that the land petitioned for is vacant, and belongs to no mission, pueblo or individual whatever; and although there is another petition requesting the same, and going through the initiatory steps, yet this is the priority, nevertheless your excellency will make such decision as you may see fit.

Monterey, November 21, 1843.

(Signed) MANUEL JIMENO.

MONTEREY, *November* 21, 1843.

The initiatory measures of the other espediente relative to this

matter being finished, the secretary will present the two, that I may decide.

(Signed) MICHELTORENA.

Filed in office, June 10th, 1852.

GEO. FISHER, *Sec'y.*

Original Grant marked Doc. J. W. No. 1, *annexed to Depo. of S. Arguello.*

Sello Primero—Ocho Pesos.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTAÑARES.

MICHELTORENA.

[SEAL.]

Manuel Micheltorena, General de Brigada del Ejercito, Mexicano, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General é Ynspector del Departamento de las Californias.

Por cuanto el ciudadano Antonio Maria Pico, ha pretendido para su beneficio personal y el de su familia el parage conocido con el nombre de Pescadero, por la parte de abajo, colindante con el rancho de Don Juan Maer, con el de Dn. José Noriega, con Buenos Ayres, al paso del Pescadero y el rio: practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas a nombre de la nacion Mexicana he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sujetandose a la aprobacion ó desaprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1o. No podra venderlo, enagenarlo, ni hipotecarlo, imponer censo, vinculo, fianza, hipoteca ni otro gravamen alguno.

2o. No impedira el cultivo y demas veneficios que han disfrutado y disfrutan los yndigenas de San José, ni los que actualm'te se hallan establecidas.

3o. Podra sercarlo sin perjudicar las travecias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.

4o. Solicitara del juez respectivo que le de la posecion juridica en vertud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de sus mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

5o. El terreno de que se hace donacion es de ocho sitios poco menos de ganado mayor segun esplica el diseño respectivo. El juez que diere la posesion lo hara medir conforme a ordenanza que dando el sobrante que resulte a la nacion para los usos convenientes.

6o. Si contrabiniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro. En consequencia mando que sirviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterrey a veinte y ocho de Noviembre de mil ochocientos cuarenta y tres.

MANUEL MICHELTORENA.

MANUEL JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro respectivo a fa. 3 va.

JIMENO.

Filed in office, Oct. 8th, 1852.

GEO. FISHER, *Sec'y.*

"D."—*Translation of Doc. J. W. No.* 1, *annexed to Depo. of S. Arguello.*

Stamp First—Eight Dollars.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-three.

(Signed) MANUEL CASTAÑARES.

(Signed) MICHELTORENA.

{ Monterey Custom-house. }

Manuel Micheltorena, General of Brigade of the Mexican Army, Adjutant General of the Staff of the same, Governor, Commanding General, and Inspector of the Department of the Californias.

Whereas citizen Antonio Maria Pico has, for his own personal benefit and that of his family, petitioned for land known by the name of "El Pescadero," bounded on the lower side by the rancho of Don Juan Marsh, by that of Don José Noriega, by "Buenos Ayres" at the pass of "El Pescadero," and by the river, the proper measures and examinations being previously made, as required by laws and regulations, using the faculties conferred on me, in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it by these presents, subject to the approval or disapproval of the most excellent departmental assembly, and under the following conditions:

1st. He may not sell, alienate, or mortgage it, subject it to any tax, entail, pledge, mortgage, or other incumbrance.

2d. He will not prevent the cultivation and other benefits which have been and are enjoyed in it by the Indians of San José, and those actually established there.

3d. He may enclose it without prejudice to the crossings, roads, and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as he may see fit; but within one year he s all build a house on it, and it shall be inhabited.

4th. He shall request the proper magistrate to give him juridical possession in virtue of this title, by whom the boundaries will be marked out, in the limits of which he shall place besides the bounds some fruit or forest trees of a useful character.

5th. The land of which donation is made is eight square leagues, as shown by the respective map. The magistrate who may give the possession will cause it to be measured in conformity with the ordinance, leaving the surplus which may result to the nation for its convenient uses.

6th. If he shall contravene these conditions, he will lose his right to the land, and it will be subject to denouncement by another person.

In consequence, I order that, this present serving him for a title, and being held as firm and valid, note be made of it in the proper book, and it be delivered to the person interested, for his security, and other purposes.

Given in Monterey, on the twenty-eighth of November, one thousand eight hundred and forty-three.

(Signed) MANUEL MICHELTORENA.

(Signed) MANUEL JIMENO, *Secretary*.

Note has been made of this order in the proper book, on folio 3, over.

(Signed) JIMENO.

Filed in office June 10th, 1852.

GEO. FISHER, *Sec'y*.

E.

Know all men by these presents, that we, Antonio Maria Pico, of the pueblo San José de Guadalupe, Upper California, and Ma. del Pilar Bernal, wife of the said Antonio Maria Pico, for and in consideration of the sum of two thousand five hundred dollars to us in hand paid by Henry M. Naglee, of San Francisco, Upper California, at or before the ensealing and delivery of these presents, the receipt whereof we do hereby acknowledge, have given, granted, bargained, sold, and conveyed, and by these presents do give, grant, bargain, sell, and convey, unto the said Henry M. Naglee, his heirs and assigns, forever, the undivided one-half of all that certain tract of land, situate in Upper California, known by the name of "Pescadero," bounded on the lower part by the rancho of Don Juan Maer, by that of Don José Noriega, by Buenos Ayres at the pass of the Pescadero and the river; being the same premises heretofore granted to the above-named Antonio Maria Pico by Manuel Micheltorena, governor of the department of the Californias, under the government of Mexico, by a grant dated at Monterey, Upper California, the twenty-eighth day of November, one thousand eight hundred and forty-three, and duly recorded in the proper book of record in the government archives at said Mon-

terey, to which said grant, for the more certain ascertainment and description of the premises herein conveyed, reference is hereby made; together with all the estate, right, title, dower, interest, and demand whatsoever, which we have, or either of us has, of, in, or to the same, or any part or parcel thereof: to have and to hold the aforesaid premises, with all the privileges and appurtenances thereunto belonging, unto the said Henry M. Naglee, his heirs and assigns, to his and their use and behoof forever. And I, the said Antonio Maria Pico, for myself, my heirs, executors, and administrators, do covenant with the said Henry M. Naglee, his heirs and assigns, that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Henry M. Naglee, his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, we have hereunto set our hands and seals, this twenty-fifth day of April, in the year one thousand eight hundred and forty-nine.

(Signed) ANTONIO MA. PICO.

(Signed) MADEL PILAR ⋈ (her mark.) BERNAL.

Sealed and delivered in presence of us, the words "undivided one-half of" being interlined between the eleventh and twelfth lines.

(Signed) WILLIAM ALEX. ANDERSON.
(Signed) LEABETTER.

STATE OF CALIFORNIA,
County of San Francisco, ss.

On this second day of September, A. D. 1850, before me, a notary public in and for said county, appeared D. Leadbetter, personally known to me to be the person whose name is subscribed in the within conveyance as a witness thereto, who being by me duly sworn, depose and say, that Antonio Ma. Pico and Ma. del Pilar Bernal, whose names are subscribed to such conveyance as parties thereto, are the persons described in and who executed the same in the presence of deponent, and that deponent subscribed his name to such conveyance as a witness thereof.

Witness my hand and seal of office.

(Signed) JOHN McVICKER,
Notary Public, San Francisco Co.

TERRITORY OF UPPER CALIFORNIA,
District of San Jose.

APRIL 28, 1849.

There personally appeared before me the within-named Antonio Ma. Pico and Madel Pilar Bernal, being known to be the persons

described in and who executed the within deed, and duly acknowledged that they executed the same for the purposes therein named, of their own free will and accord.

Before me.

K. H. DIMMECK, 1*st Alcalde.*

Filed in office June 10th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Deed from Pico and wife to Naglee.—Original Deed.

Know all men by these presents, that we, Antonio Maria Pico, of the pueblo of San José de Guadalupe, Upper California, and Ma. del Pilar Bernal, wife of the said Antonio Maria Pico, for and in consideration of the sum of two thousand five hundred dollars to us in hand paid by Henry M. Naglee, of San Francisco, Upper California, at or before the ensealing and delivery of these presents, the receipt whereof we do hereby acknowledge, have given, granted, bargained, sold, and conveyed, and by these presents do give, grant, bargain, sell, and convey unto the said Henry M. Naglee, his heirs and assigns forever, the undivided one half of all that certain tract of land situated in Upper California, known by the name of Pescadero, bounded on the lower part by the rancho of Don Juan Mäer, by that of Don José Noriega, by Buenos Ayres at the pass of the Pescadero and the river, being the same premises heretofore granted to the above named Antonio Maria Pico by Manuel Micheltorena, governor of the department of the Californias, under the government of Mexico, by a grant dated at Monterey, Upper California, the twenty-eighth day of November, in the year one thousand eight hundred and forty-three, and duly recorded in the proper book of record, in the government archives at said Monterey—to which said grant, for the more certain ascertainment and description of the premises herein conveyed, reference is hereby made—together with all the estate, right, title, dower, right of dower, interest and demand whatsoever, which we have, or either of us has, of, in, or to the same, or any part or parcel thereof: to have and hold the aforesaid premises, with all the privileges and appurtenances thereunto belonging, unto the said Henry M. Naglee, his heirs and assigns, to his and their use and behoof forever; and I, the said Antonio Maria Pico, for myself, my heirs, executors and administrators, do covenant with the said Henry M. Naglee, his heirs and assigns, that I will, and my heirs, executors and administrators shall warrant and defend the same to the said Henry M. Naglee, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof we have hereunto set our hands and seals this twenty-fifth day of April, in the year one thousand eight hundred and forty-nine.

ANTONIO MA. PICO, [SEAL.]

her
MADEL PILAR ⋈ BERNAL. [SEAL.]
mark.

terey, to which said grant, for the more certain ascertainment and description of the premises herein conveyed, reference is hereby made; together with all the estate, right, title, dower, interest, and demand whatsoever, which we have, or either of us has, of, in, or to the same, or any part or parcel thereof: to have and to hold the aforesaid premises, with all the privileges and appurtenances thereunto belonging, unto the said Henry M. Naglee, his heirs and assigns, to his and their use and behoof forever. And I, the said Antonio Maria Pico, for myself, my heirs, executors, and administrators, do covenant with the said Henry M. Naglee, his heirs and assigns, that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Henry M. Naglee, his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, we have hereunto set our hands and seals, this twenty-fifth day of April, in the year one thousand eight hundred and forty-nine.

(Signed) ANTONIO MA. PICO.

(Signed) MADEL PILAR her ✕ mark. BERNAL.

Sealed and delivered in presence of us, the words "undivided one-half of" being interlined between the eleventh and twelfth lines.

(Signed) WILLIAM ALEX. ANDERSON.
(Signed) LEABETTER.

STATE OF CALIFORNIA,
County of San Francisco, ss.

On this second day of September, A. D. 1850, before me, a notary public in and for said county, appeared D. Leadbetter, personally known to me to be the person whose name is subscribed in the within conveyance as a witness thereto, who being by me duly sworn, depose and say, that Antonio Ma. Pico and Ma. del Pilar Bernal, whose names are subscribed to such conveyance as parties thereto, are the persons described in and who executed the same in the presence of deponent, and that deponent subscribed his name to such conveyance as a witness thereof.

Witness my hand and seal of office.

(Signed) JOHN McVICKER,
Notary Public, San Francisco Co.

TERRITORY OF UPPER CALIFORNIA,
District of San Jose.

APRIL 28, 1849.

There personally appeared before me the within-named Antonio Ma. Pico and Madel Pilar Bernal, being known to be the persons

described in and who executed the within deed, and duly acknowledged that they executed the same for the purposes therein named, of their own free will and accord.

Before me.

K. H. DIMMECK, 1*st Alcalde.*

Filed in office June 10th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Deed from Pico and wife to Naglee.—Original Deed.

Know all men by these presents, that we, Antonio Maria Pico, of the pueblo of San José de Guadalupe, Upper California, and Ma. del Pilar Bernal, wife of the said Antonio Maria Pico, for and in consideration of the sum of two thousand five hundred dollars to us in hand paid by Henry M. Naglee, of San Francisco, Upper California, at or before the ensealing and delivery of these presents, the receipt whereof we do hereby acknowledge, have given, granted, bargained, sold, and conveyed, and by these presents do give, grant, bargain, sell, and convey unto the said Henry M. Naglee, his heirs and assigns forever, the undivided one half of all that certain tract of land situated in Upper California, known by the name of Pescadero, bounded on the lower part by the rancho of Don Juan Mäer, by that of Don José Noriega, by Buenos Ayres at the pass of the Pescadero and the river, being the same premises heretofore granted to the above named Antonio Maria Pico by Manuel Micheltorena, governor of the department of the Californias, under the government of Mexico, by a grant dated at Monterey, Upper California, the twenty-eighth day of November, in the year one thousand eight hundred and forty-three, and duly recorded in the proper book of record, in the government archives at said Monterey—to which said grant, for the more certain ascertainment and description of the premises herein conveyed, reference is hereby made—together with all the estate, right, title, dower, right of dower, interest and demand whatsoever, which we have, or either of us has, of, in, or to the same, or any part or parcel thereof: to have and hold the aforesaid premises, with all the privileges and appurtenances thereunto belonging, unto the said Henry M. Naglee, his heirs and assigns, to his and their use and behoof forever; and I, the said Antonio Maria Pico, for myself, my heirs, executors and administrators, do covenant with the said Henry M. Naglee, his heirs and assigns, that I will, and my heirs, executors and administrators shall warrant and defend the same to the said Henry M. Naglee, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof we have hereunto set our hands and seals this twenty-fifth day of April, in the year one thousand eight hundred and forty-nine.

ANTONIO MA. PICO, [SEAL.]

her
MADEL PILAR ⋈ BERNAL. [SEAL.]
mark.

Sealed and delivered in the presence of us, the words "the undivided one half of" being first *entertained* between the eleventh and twelfth lines.

WILLIAM ALEX. ANDERSON,
D. LEADBETTER.

STATE OF CALIFORNIA,
County of San Francisco, ss.

On this second day of September, A. D. 1850, before me, a notary public in and for said county, appeared D. Leadbetter, personally known to me to be the person whose name is subscribed to the within conveyance as a witness thereto, who being by me duly sworn, depose and say, that Antonio Ma. Pico and Madel Pilar Bernal, whose names are subscribed to such conveyance as parties thereto, are the persons described in and who executed the same in the presence of deponent, and that deponent subscribed his name to such conveyance as a witness thereof.

[SEAL.] Witness my hand and seal of office.

JOHN McVICKER,
Notary Public, San Francisco.

TERRITORY OF UPPER CALIFORNIA,
District of San Jose.

APRIL 28th, 1849.

Then personally appeared before me the within named Antonio Ma. Pico and Ma. del Pilar Bernal, being known to be the persons described in and who executed the within deed, and duly acknowledged that they executed the same or the purposes therein named, of their own free will and accord. Before me,

K. H. DEMMICK, 1*st Alcalde.*

Filed for record 16th day of September, 1850, 8 o'clock and 40 minutes. Recorded same day, volume one of deeds, Martinez, Contra Costa county, pages 138, 139, and 140.

THOMAS A. BROWN,
Fees $5 25. *County Recorder of Contra Costa County.*

Recorded in the Juzgado del pueblo de San José, April 28th, A. D. 1849, in book 5 of deeds, on pages 45 and 46.

K. H. DEMMICK, *Alcalde.*

Fees $5 25.

Filed in office September 10th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Opinion.

ANTONIO MARIA PICO, HENRY M. NAYLEE, vs. THE UNITED STATES. } No. 267.

Claim for the place called "El Pescadero," San Joaquin county, embracing eight square leagues.

This claim is founded on a grant issued to Antonio Maria Pico by the governor, Manuel Micheltorena, bearing date the 28th day of November, A. D. 1843.

In this case there is no evidence that the grantee, Antonio Maria Pico, ever complied with any of the requisitions of the Mexican colonization law, or any of the conditions of the grant, nor has he offered any legal excuse for not doing so, so as to entitle him to an equitable consideration of his claim. It is the opinion of the board that the said claim should be rejected, and a decree entered accordingly. Rejected.

Filed in office September 19th, 1854.

GEO. FISHER, *Sec'y.*

Decree.

ANTONIO MARIA PICO and HENRY M. NAGLEE vs. THE UNITED STATES. } No. 267.

On hearing of the proofs and allegations in this case, it is adjudged by the commission that the claim of the said petition is not valid, and it is therefore declared that his application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office September 19th, 1854.

GEO. FISHER, *Sec'y.*

Order.

And it appearing to the satisfaction of this board, that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-six pages, numbered from 1 to 26, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of

the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 267 on the docket of the said board, wherein Antonio Maria Pico et al. are the claimants against the United States, for the place known by the name of "El Pescadero."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this thirty-first day of January, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed February 5th, 1855.

JOHN A. MONROE, *Clerk.*

Notice of intention to prosecute Appeal.

United States District Court for the northern district of California.

ANTONIO MARIA PICO and HENRY M. NAGLEE, Claimants and Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Take notice, that the above named claimants and appellants intend to prosecute the appeal taken from the decision rendered against them, September 19th, 1854, upon a claim filed and presented to the board of U. S. land commissioners, appointed to settle private land claims in the State of California, which claim was for certain lands in San Joachin county, in this State, known as "El Pescadero," and a certified transcript whereof was filed with the clerk of said district court on the 30th day of December, A. D. 1854.

Dated this 17th day of March, A. D. 1855.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Appellants.

Endorsed: Filed March 17th, 1855.

JOHN A. MONROE, *Clerk.*

Petition for Review, &c.

To the honorable the District Court of the United States for the northern district of California.

The petition of Antonio Maria Pico and Henry M. Naglee respectfully sets forth and shows unto this court, that on the tenth day of June, one thousand eight hundred and fifty-two, before the commission constituted and appointed for the purpose of ascertaining and settling private land claims in the State of California, a petition and claim was filed by your petitioners claiming title, and praying a confirmation of such title to a tract of land situated in said northern district of California, known as "El Pescadero."

(For a description of said lands, and for a deraignment of the title of your petitioners thereto, they hereby specially refer your honorable court to said petition filed as aforesaid before said commission.) And your petitioners further show, that after the filing of said petition, the same was placed upon the calendar of causes pending before said commission, and that the claim of your petitioners was opposed on the part of the United States of America by the law agent, for that purpose appointed; that proofs were taken and evidence was adduced, as well on behalf of your petitioners as on behalf of the said United States, and that said proofs and testimony were afterwards submitted to the said commission, (or board of commissioners,) who having considered the same, on the 19th day of December, 1854, pronounced a decision thereon, to the effect that the claim of your petitioners to said lands was not a good and valid one, and should therefore be, and the same was rejected by said board of commissioners. And your petitioners further show, that afterwards, to wit, on the 8th day of February, 1855, a transcript of said cause, containing a full record of the proceedings and evidence had and taken before said board of commissioners, was filed in this court, which filing, by virtue of the act of Congress in that behalf, operated as an appeal for and by your petitioners from the said decision to this honorable court; and thereupon, on the 17th day of March, 1855, your petitioners filed in this court a written notice of their intention to prosecute the said appeal herein.

Your petitioners further show and aver, that the said decision of the said board of commissioners is erroneous, and that the said title or claim of your petitioners is good and valid, and ought to be confirmed.

Your petitioners therefore pray this honorable court that their appeal taken in this cause may be heard and determined, and that the said decision of said board of commissioners be reversed, and that your honorable court will confirm the title of your petitioner to the said lands.

LOCKWOOD, TYLER & WALLACE,
Att'ys for Petitioners and Appellants.

Service of a copy of the within petition is hereby admitted.
June 25th, 1855.

S. W. INGE.

Endorsed: Filed June 25th, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer.

In the District Court of the United States for the northern district of California.

THE UNITED STATES, Appellees, ads. ANTONIO MARIA PICO and HENRY M. NAGLEE. } No. 170.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellants, and pray that the decision of the board of commissioners be affirmed, and that the said title be decreed to be invalid.

A. GLASSELL, *Ass't U. S. Att'y.*

Endorsed: Filed August 2d, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Wm. B. Fleming.

United States District Court, northern district of California.

ANTONIO MARIA PICO et al. vs. THE UNITED STATES.

SAN FRANCISCO, *October 18th*, 1855.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Wm. B. Fleming, a witness produced on behalf of the claimants in case No. 170, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 267 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, R. A. Lockwood, esq., att'y for the claimants, and the U. S. dist. attorney, by A. Glassell, esq.

Questions by Claimants' Counsel.

What is your name, age, and place of residence; and what is your occupation?

Answer. Wm. B. Fleming; 28 years of age; reside in San Francisco, California, and am a clerk in the board of U. S. land commissioners for California.

Question 2d. State what you know of the deed now produced by you.

Answer. The deed now produced, of which the one in the transcript in this case, on page No. 23 thereof, purports to be a copy, was taken by me from the files of case No. 267 in the archives of said commission for the purpose of being proved in this case. It is a deed from Antonio M. Pico and wife to Henry M. Naglee for the undivided one-half of the Piscadero rancho, dated April 25th,

1849, and upon comparing the copy in the transcript with the original now produced, I find it to be a true copy. I know the signature of the grantor, Antonio Maria Pico, having seen him write, and believe the signature to the said original deed to be his true and genuine signature. WM. B. FLEMING.

Sworn to and subscribed before me this 18th day of October, 1855. JOHN A. MONROE,
U. S. Commissioner.

Endorsed: Filed October 18th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of A. P. Crittenden.

A. P. Crittenden, a witness produced on behalf of the claimants, being duly sworn according to law, deposes and says:

Question 1st. What is your name, age and place of residence?

Answer. A. P. Crittenden; 39 years of age; and reside in San Francisco, California.

Question 2d. Did you know one D. Leadbetter in California? if yea, state what you know of him and where he is.

Answer. I did; I have known him for more than 20 years. He is an officer in the United States army. Came to California in 1849 on public service, and left here in the spring of 1850. He is in the corps of U. S. engineers. There is not another officer in the army of that name, I think, and I am very sure there is not another one of that name in the engineer corps. He has not returned to California, to my knowledge, since he left in the spring of 1850. I saw him in Washington in the winter of 1851 and 1852. If he had returned to California I would have heard of it.

A. P. CRITTENDEN.

Sworn to and subscribed before me, this 18th October, 1855.
JOHN A. MONROE,
U. S. Commissioner.

Endorsed: Filed October 18th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of H. Ehrenberg.

Herman Ehrenberg, being called as a witness on behalf of the claimants, and duly sworn according to law, deposes and says:

Question 1st. What is your name, age and place of residence?

Answer. Herman Ehrenberg; 35 years of age; and reside in San Francisco, California.

Question 2d. Do you know William Alexander Anderson, one of the subscribing witnesses to the original deed produced by the witness Fleming, and mentioned in his foregoing deposition?

Answer. I do; I knew him in 1848 in Lower California; he was

interpreter to the American troops; afterwards in Monterey; and last in 1849, in San José, California. He was clerk in the latter place to some commercial house. He is now in Mexico. I have seen him write frequently, and, as far as I am able to judge, the signature of William Alex. Anderson, on the said deed as a subscribing witness, is his own and genuine handwriting.

HERMAN EHRENBERG.

Sworn to and subscribed before me, this 18th October, 1855.

JOHN A. MONROE,
U. S. Commissioner.

Endorsed: Filed October 18th, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of H. P. Andrews.

Henry P. Andrews, a witness produced on behalf the claimants, being duly sworn, according to law, deposes and says:

Question 1st. What is your name, age and place of residence?

Answer. Henry P. Andrews; 33 years of age; and I reside in San Francisco, California.

Question 2d. Do you know D. Leadbetter, one of the subscribing witnesses to the original deed produced by the witness Fleming, and mentioned in his foregoing deposition?

Answer. I know Danville Leadbetter; he is a captain in the corps of U. S. engineers. I have seen him write several times, and have seen his writing frequently; am acquainted with his handwriting.

The signature of D. Leadbetter, as it appears on said original deed, as a subscribing witness, to the best of my knowledge and belief, is in the handwriting of said Danville Leadbetter.

HENRY P. ANDREWS.

Sworn to and subscribed before me, this 18th October, 1855.

JOHN A. MONROE,
U. S. Commissioner.

Endorsed: Filed October 18th, 1855.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion delivered by his Honor Judge Ogden Hoffman.

ANTONIO MARIA PICO
vs.
THE UNITED STATES.

The claim in this case is founded on a grant issued by Governor Micheltorena bearing date the 28th day of November, 1843.

The expediente is produced from the archives, and the original grant delivered to the party interested, the authenticity of which is duly proved.

The claim was, however, rejected by the board, on the ground that the conditions of the grant had not been performed, and that no legal excuse for non-performance had been offered.

This decision was rendered before the case of Fremont was determined by the Supreme Court. In the statement of the case filed by the counsel for the appellant, no argument is offered on the points involved in the case, the expectation being confidently entertained that the rules laid in The United States vs. Fremont would govern the case. On the part of the United States no argument is submitted, the court being merely referred to the objections urged in similar cases.

It is to be regretted that the point involved in this case was not debated by counsel, and that the court is obliged to arrive at a conclusion unassisted by argument at the bar.

It is not pretended that the grantee ever complied, during the existence of the former government, with the conditions of the grant.

By the testimony of A. Suñol it appears that "soon after Pico received his grant he prepared to remove his cattle on his rancho, but the Indians became hostile about this time and murdered Gulnac's mayordomo on the other side of the river, and prevented Pico from settling on his land. From this time until 1848 and 1849 the Indians continued hostile—robbed the ranchos, even down to the valley of San José. In 1847 troops were sent against them, but they continued their depredations until after the discovery of gold in 1848."

The conditions attached to grants in California were clearly conditions subsequent, and by the decision of the Supreme Court in the case of Fremont vs. The U. S., it is established that the grant of the governor, although unconfirmed by the departmental assembly, "vested in the grantee a present and immediate interest." It is true that the grant in that case alluded to the meritorious services of the grantee; but, independently of the fact that the governors do not seem to have been authorized by the colonization laws to recompense such services by grants of land, and could at most only consider them as entitling the applicant to a preference over other petitioners, it is clear that the grants, being in the same terms, must receive the same construction, whatever consideration may have moved the governor to make them. The law under which he acted was intended to secure the settlement of the country by providing for the distribution of the public land among colonists and settlers. To such alone the governor was authorized to grant, and we accordingly find that, in almost all cases, conditions were annexed to the grant, requiring the occupation and cultivation of the ceded land. Under our system the same result is attained by withholding the patent or final title until after the person who has *who* entered the land has effected a permanet set-

tlement upon it. Under the Mexican law, however, a full title issued in the first instance, but conditions were attached to it providing for a forfeiture in case the grantee, by omitting to occupy and settle upon his land, defeated the policy of the government, and failed to furnish what was the sole consideration of the grant.

These grants then passed a present and immediate interest to the grantee, subject, however, to conditions subsequent. And such was their effect not only when the departmental assembly had confirmed, but even, as decided in the case of Fremont, without such confirmation.

From this general statement it is, we think, apparent that the principles established in that case apply to all colonization grants made under the regulations of 1828, and cannot be restricted to those alone in which the meritorious services of the grantee may happen to be alluded to in the grant.

This grant, then, like that to Alvarado in the case referred to, having vested in the grantee a present and immediate interest, the inquiry, as in that case, is, "whether there has been any unreasonable delay or want of effort on the part of the grantee to fulfil its conditions, and whether there is room for the presumption that the party had abandoned his claim before the Mexican power ceased to exist, and is now endeavoring to resume it from its enhanced value."

The facts in the case of Fremont, on which it was held that no unreasonable delay had occurred, and that no such presumption arose, were established in a manner much more satisfactory than those relied on in this case. It may not be "very clear," as in that case, that during the continuance of the Mexican power, it was impossible to have made a survey or built a house on the land; but the fact exists in this case, as in that, that no one else proposed to settle on it, or denounced it for not-fulfilment of the conditions.

The testimony of Suñol, though less full and satisfactory than could be wished, nevertheless shows that the obstacles to the settlement were nearly identical with those which prevented Alvarado from complying with the conditions of his grant.

The grant to Pico is dated, however, in 1843, while that to Alvarado was issued in February, 1844, only 3 months afterwards. The general condition of the country, and the political disturbances which prevented a settlement in the one case, must have interposed obstacles equally insurmountable in the other. But the inquiry is, not whether the grantee could by possibility have effected a settlement on his land, but whether his delay has been unreasonable, and so unreasonable as to furnish a presumption that he had abandoned his claim, and that he is now fraudulently attempting to resume it. Under the evidence we feel constrained to say that his delay is not only susceptible of an explanation consistent with the absence of any

intention, on his part, to abandon his claim, but that it seems to have been caused by circumstances over which he had no control, and which probably rendered it unavoidable.

It may be urged that in this case the governor did not, as in the case of Alvarado, dispense with the diseño or plan which usually accompanied the petition, and that the presumption does not arise in this case, as in that; that the governor, by "officially admitting" that the land was situated in such a wilderness, "and bordered by such dangerous neighbors as that no plan could be prepared," impliedly recognised the impracticability of effecting a settlement within the time. There is some force, perhaps, in this suggestion. But it is to be remembered that the governor expressly imposed upon Alvarado the condition of making his settlement within the year; and if his dispensing with the diseño might be considered as a recognition of the fact that the condition of the country might occasion delays, and that such delays would not be deemed unreasonable, the circumstance that he, notwithstanding, insisted in the 2d condition on the settlement within the usual time, in some degree at least impairs the force of the argument. The insertion of the condition is not, however, so conclusive on this point as it might appear; for the dispensing with the diseño was an unusual and exceptional indulgence of the governor, in granting which he exercised a discretion after his attention had been attracted to the subject, while the insertion of the usual conditions in the grant was probably the work of some clerk, who drew up the paper in the usual form, and without reference to any peculiar circumstances attending it. The insertion of the conditions could, moreover, under the Mexican system, have naturally been but little regarded by the grantee, for he knew that so long as he was unable to effect a settlement, no one else would be, and, as observed by the Supreme Court, that the grant would not be forfeited unless some other person desired and was ready to occupy the land.

I do not perceive, therefore, that the fact that the governor in the case of Frémont dispensed with the diseño, while in this case it was duly submitted with the petition, furnishes ground for a broad distinction between that case and this.

The important and the sole question is, as propounded by the Supreme Court in the case so often referred to, "whether anything done or omitted to be done by the grantee during the existence of the Mexican government for California forfeited the interest he had acquired, and revested it in the government."

Such forfeiture could only have been incurred by unreasonable delay, or want of effort on his part to fulfil conditions, and such as to raise the presumption that had abandoned his claim.

It being shown in this case that the delay arose from obstacles which may be regarded as insuperable; that it was not only unreasonable, but probably unavoidable, no presumption of abandonment

can arise; and the title not having been "forfeited and revested in the government, remained, at the time the sovereignty passed to the United States, vested in the grantee, and the United States are bound in good faith to uphold and protect it." 17 How., p. 557.

A decree of confirmation must therefore be entered.

Decree.

In the District Court of the United States for the northern district of California.

ANTONIO MARIA PICO and HENRY M. NAGLEE, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellees. } Decree No. 170.

Appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

This cause came on to be heard at the said term, on the appeal of said appellants from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved March 3d, 1851, upon the transcript of the record and proceedings on which the said decision was founded, and upon additional testimony taken in this court, and it appearing to the court that the said transcript was duly filed according to law, and the counsel of the respective parties having been heard, and the allegations and proofs considered, and the court being sufficiently advised in the premises, it is now here ordered, adjudged and decreed by this court that the said decision of the said board of commissioners be, and the same is by this court, reversed, set aside, and annulled. And it is further ordered, adjudged and decreed by this court, that the claim of the said appellants, Antonio Maria Pico and Henry M. Naglee, as set forth in the said record and proceedings, is a good and valid claim, and that the same be and is now by this court confirmed to the said appellants to the extent of eight square leagues of land, within the boundaries described in the plan annexed to the espediente, and referred to in the original grant, copies whereof are on file in this cause, provided that the said quantity of eight square leagues so confirmed be contained within the said boundaries; but if the quantity therein contained be less than eight square leagues, then the said claim is by this court confirmed to the extent of such less quantity, and no more.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed September 2d, 1856.
JOHN A. MONROE, *Clerk.*

Order granting Appeal.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-

room, in the city of San Francisco, on Thursday the 10th day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. ANTONIO MARIA PICO et al. } D. C. 170.—L. C. 267.

In this case, on application of the United States attorney made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court rendered in said cause at the June, 1856, term, be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed September 10th, 1857.

JOHN A. MONROE, *Clerk.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday the 19th day of July, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable M. Hall McAllister, circuit judge.

THE UNITED STATES vs. ANTONIO MARIA PICO and HENRY M. NAGLEE. } D. C. 170.—L. C. 267.

In this case, on application of P. Della Torre, esq., U. S. attorney, it is ordered that an appeal in behalf of the United States from the final decision of the court, rendered in said court at the June, 1856, term, be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay; and the appellants are ordered to serve the usual citation according to law.

M. HALL McALLISTER,
Judge Cir. Court U. S. Dist's of California.

Endorsed: Filed July 19th, 1858.

W. H. CHEVERS, *Clerk.*

Citation.

United States of America to Antonio Maria Pico and Henry M. Naglee, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on the nineteenth day of July, A. D. 1858, by the Hon.